IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL CASE No 3 of 1991

For Approval and Signature:

HON'BLE MR.JUSTICE K.A.PUJ

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

O.L. OF NEW JAGAT TEXTILE MILLS

Versus

VIKRAM P PALKHIWALA & OTHERS

Appearance:

1. CRIMINAL CASE No. 3 of 1991

MR ASHWIN L SHAH for Official Liquidator.

MR MJ THAKORE for Accused No. 1

MR GN SHAH for Accused No. 2

CORAM : HON'BLE MR.JUSTICE K.A.PUJ

Date of decision: 09/02/2005

ORAL JUDGEMENT

The O.L. of M/s. New Jagat Textile Mills Pvt. Ltd. (In Liquidation) has filed this complaint under

Section 454 (5) of the Companies Act, 1956 against the accused on the ground that the accused have failed to file statement of affairs within the statutory period. It is stated by the O.L. that the accused Nos. 1 & 2 have not filed the statement of affairs with the O.L. as was required in terms of the Provisions of Section 454 (3) of the Act and the said accused continued to be in default without any reasonable cause or lawful excuse. It is also stated in the complaint that the Ex-Directors of the Company i.e. accused Nos. 1 & 2 have failed to hand over complete Books of Accounts, Records and other assets of the Company to the O.L. for which separate proceedings have been initiated by the O.L. before this Court seeking appropriate directions.

2. On notice being issued, the accused were represented through their advocates. The matter was adjourned for more than 83 times and several orders were passed by this Court. This Court has passed a detailed order on 01.10.2004 wherein this Court has directed the O.L. to approach the City Civil Court and take possession of the properties of the Company in liquidation including the records which are lying in the property sealed by the Court or in the custody of the Court, as the case may be. Thereafter, it would be open to the accused to obtain necessary inspection in accordance with law of the records and submit the statement of affairs.

3. Despite the specific direction, the records were not obtained from the Civil Court. The Court, therefore, was constrained to pass further orders on 13.01.2005 and 27.01.2005. On 27.01.2005, this Court has observed that when it was difficult for the O.L. to get the record from the Civil Court, it would be more difficult for the accused to file Statement of Affairs on the basis of the records which are yet to be received. The Court has, therefore, made clear that the matter will be finally heard on the next date of hearing.

4. Today when the matter is called out, Mr. Ashwin L. Shah, learned advocate appearing for the O.L. has submitted that the records could not be obtained from the Civil Court as directed by this Court.

5. Mr. Mehta, learned advocate appearing for accused No. 1 has submitted that the matter is pending for the last more than 14 years and the accused No. 1 has been repeatedly writing letters to the O.L. to give inspection of the records. Even before filing the criminal complaint by the O.L., the accused No. 1 wrote

a letter to the O.L. way back in 1988 informing him about the several proceedings pending before the Civil Court, Criminal Court as well as Labour Court. He has put on record summary of the correspondence which was entered into between the accused and the O.L. In all, there are 30 letters produced on record. The accused No. 1 wrote a letter in 1991 asking for inspection which was replied to by the O.L. in 2003 and that too for giving inspection of whatever little record which was available with the O.L. He has, therefore, submitted that the accused is prevented by reasonable cause in furnishing the statement of affairs. He has submitted that as per the Provisions contained in Section 454 (5), if any person, without reasonable excuse, makes default in complying with any of the requirements of this Section, he shall be punishable with imprisonment for a term which may extend to two years, or with fine which may extend to Rs. 1,000/- for every day during which the default continues, or with both. The section itself contemplates that if there is a reasonable excuse, then neither prosecution be launched nor penalty be levied . The very fact that even after the expiry of the period of about 14 years, the record from the different Courts could not be obtained by the O.L. and inspection of those records could not be given to the accused by the O.L. itself shows that there is a reasonable excuse.

6. Mr. Ashwin L. Shah, learned advocate appearing for the O.L. has submitted that section itself casts duty on the accused to file Statement of Affairs on the basis of whatever records available with them. It does not envisage that complete record should be available. Since the statements are not filed by the accused, it is not open for the accused to take shelter of the fact that the O.L. could not obtain the record from the Civil Court or Criminal Court. He has, therefore, submitted that this case should be proceeded with against the accused.

7. After having heard learned advocates appearing for the respective parties and after having gone through the complaint as well as the affidavits filed by the accused on record and the submissions made by them, the Court is of the view that since the O.L. could not obtain the records till this date despite specific directions from this Court, the accused cannot be penalised or prosecuted till the inspection of the records is given, on the ground that they have failed to file Statement of Affairs. The Court, however, does not express any opinion on the merits of the matter or does not absolve the accused from their obligation to file

Statement of Affairs. The Court is, however, of the view that the accused are prevented by reasonable cause from filing the statement of affairs as the inspection of the records could not be given by the O.L. despite repeated requests were made and despite specific directions are given by this Court. The Court, however, quashes this complaint at this stage on this limited ground with a liberty to file a fresh complaint if the default is committed after inspection of the record be given to the accused.

8. In the above view of the matter, the criminal complaint No. 3 of 1991 is hereby quashed and the O.L. is directed to obtain records of the Company which are lying with the Civil Courts, Criminal Courts and/or Labour Court and after obtaining the record, an inspection be given to the accused and they may be asked to file Statement of Affairs on the basis of the inspection of the records so given and if the accused fails to file Statement of Affairs, it is open for the O.L. to file criminal complaint a fresh under Section 454 (5) of the Act for failure to file Statement of Affairs.

9. Subject to the aforesaid observation and direction, Criminal Complaint No. 3 of 1991 is hereby quashed.

[K.A. PUJ, J.]

#Savariya#

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